

Message Text

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ACTION EB-07

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FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC IMMEDIATE 7476

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

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E.O. 11652: N/A

TAGS: EAIR, BR

SUBJECT: FUEL TAX EXEMPTION FOR US NON-SKEDS

REF: STATE 194556

1. SUMMARY. AMBASSADOR BROACHED SUBJECT WITH FOREIGN MINISTER AND LATER MET WITH CHIEF OF ECONOMIC DEPARTMENT OF FOREIGN MINISTRY. WITH BOTH, AMBASSADOR EXPRESSED CONCERN, PER REFTEL, OVER DELAY. AMBASSADOR WAS PRESENTED WITH DIPLOMATIC NOTE(FULL TEXT BELOW IN PGH 8) PROPOSEING THAT OUR GOVERNMENTS EXAMINE TOGETHER THE PROBLEM OF NON-SCHEDULED SERVICE IN THE "TOTALITY OF ITS IMPLICATION". WHEN CHIEF OF ECONOMIC DEPARTMENT MADE CLEAR THE GOB'S DESIRE TO NEGOCIATE A CHARTER BILATERAL, THE AMBASSADOR EXPRESSED OUR GREAT DIS-APPOINTMENT. THE CHIEF THEN INDICATED THE FOREIGN MINISTRY WAS PREPARED TO RECIEVE A COUNTER PROPOSAL TO NARROW THE FOCUS FORA BILATERAL UNDERSTANDING TO THE FUEL TAX EXEMPTION. EMBASSY SEEKS DEPARTMENT'S ADVISE ON SUCH A COUNTER PROPOSAL
END SUMMARY.

2. ON AUGUST 18, FOREIGN MINISTER SILVIERA IN A BRIEF LUNCHEON CONVERSATION WITH THE AMBASSADOR, WHO HAD EXPRESSED
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CONCERN OVER DELAY IN THE FUEL TAX EXEMPTION MATTER, STATED

THAT A NOTE WAS IN PREPARATION AND SUGGESTED THAT THE AMBASSADOR DISCUSS THE DETAILS WITH AMBASSADOR PAULO CABRAL DE MELLO, CHIEF OF ECONOMIC DEPARTMENT, FOREIGN MINISTRY.

ON AUGUST 20, AMBASSADOR MET WITH CABRAL DE MELLO AND WITH COUNSELOR HELCIO TAVARES PIRES, CHIEF OF TRANSPORTATION DIVISION OF THE FOREIGN MINISTRY. STATING THAT HE WAS SEEKING INFORMATION ON THE STATE OF PLAY WITHIN THE GOB ON THE FUEL TAX QUESTION, THE AMBASSADOR EXPRESSED DEEP CONCERN AT LONG DELAY IN FOLLOWING UP THE VERY POSITIVE STATEMENTS MADE BY MINISTER SILVEIRA AT THE OCCASION OF THE SIGNING OF THE BILATERAL AIRWORTHINESS AGREEMENT. THE AMBASSADOR NOTED THAT THE DEPARTMENT OF COMMERCE IS CONTINUING TO RECEIVE INCREASING PRESSURE FOR A SOLUTION TO THE FUEL TAX ISSUE AND THAT COMMERCE HAS STATUTORY OBLIGATIONS TO ADDRESS THE QUESTION OF THE CONTINUED EXISTENCE OF RECIPROCITY OF TREATMENT. THE AMBASSADOR POINTED OUT THE IMPORTANCE OF A RAPID SOLUTION IN ORDER TO AVOID THE DETERIORATION OF OUR GENERALLY EXCELLENT CIVIL AVIATION RELATIONS AS A CONSEQUENCE OF THIS ISSUE.

4. CABRAL DE MELLO GAVE THE AMBASSADOR A DIPLOMATIC NOTE (SEE TEXT BELOW) WHICH IN EFFECT PROPOSES THAT THE TWO GOVERNMENTS EXAMINE TOGETHER THE PROBLEM OF NON-SCHEDULED AIRLINE SERVICES BETWEEN THE TWO COUNTRIES IN THE "TOTALITY OF ITS IMPLICATIONS." ALTHOUGH THE NOTE DOES NOT SO STATE SPECIFICALLY, IT WAS CLEAR FROM THE ACCOMPANYING COMMENTS THAT THE GOB HAD IN MIND THE NEGOTIATIONS OF A BROAD CHARTER BILATERAL.

5. THE AMBASSADOR EXPRESSED HIS GREAT DISAPPOINTMENT AT THIS PROPOSED ROUTE TO A SOLUTION AND ADDED THAT HE WAS SURE THAT A SIMILAR DISAPPOINTMENT WOULD BE FILED IN WASHINGTON. DRAWING UPON THE POINTS MADE IN REFTEL, THE AMBASSADOR STRESSED THAT THIS ISSUE OF THE FUEL TAX EXEMPTION WAS CLEAR, WELL-DEFINED, AND NARROW; AND THAT A DISCUSSION OR NEGOTIATION ENCOMPASSING THE FULL RANGE OF QUESTIONS CONCERNING NON-SCHEDULED AIRLINES WOULD OF NECESSITY BE LONG AND INVOLVED, TAKING INTO ACCOUNT THE APPARENT DIFFERENCES IN PHILOSOPHY BETWEEN THE U.S. AND BRAZIL ON NON-SCHEDULED LIMITED OFFICIAL USE

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CHARTERS. THE AMBASSADOR AGAIN REMINDED CABRAL DE MELLO OF THE VERY POSITIVE STATEMENTS MADE BY MINISTER SILVEIRA AT THE OCCASION OF THE AIRWORTHINESS AGREEMENT AND IN THIS CONTEXT REFERRED TO THE TWO-WAY NATURE OF COOPERATION. THE AMBASSADOR ALSO REFERRED TO THE 1966 ICAO RESOLUTION AND THE 1967 BRAZILIAN RESPONSE TO THE RESOLUTION, IN WHICH IT CLEARLY STATED THAT EXEMPTION WOULD BE APPLIED TO ALL AIRCRAFT REGARDLESS OF THE TYPE OF OPERATION PERFORMED.

THE AMBASSADOR SUGGESTED THAT THIS STATEMENT THAT HAD INTERNATIONAL STANDING COULD BE THE BASIS FOR SEEKING A CHANGE IN BRAZILIAN LAW 1815 OF FEBRUARY, 1953, OR FOR REACHING A BILATERAL UNDERSTANDING WITH THE USG. THE AMBASSADOR, SPEAKING PERSONALLY, THEN SUGGESTED THAT PERHAPS THERE COULD BE ABILATERAL UNDERSTANDING THAT WOULD FOCUS SPECIFICALLY ON THE RESOLUTION OF THE QUESTION OF EXEMPTING FUEL TAX FOR NON-SCHEDULED AIRLINES AND MAKE GENERAL REFERENCE TO EVENTUAL NEGOTIATIONS OF A BROAD CHARTER BILATERAL.

6. CABRAL DE MELLO RESPONDED THAT MINISTER SILVEIRA AT THE TIME OF THE AIRWORTHINESS AGREEMENT HAD MADE HIS POSITIVE COMMENTS TO THE AMBASSADOR BECAUSE HE BELIEVED AT THAT TIME THAT A QUICK SOLUTION COULD BE FOUND, BUT THAT HE HAD NOT APPRECIATED THE LEGAL COMPLEXITIS. CABRAL DE MELLO ADDED THAT HE HIMSELF DID NOT BELIEVE AT BILATERAL AGREEMENT OF THE ALLUDED TO IN THE NOTE WOULD TAKE LONG TO NEGOTIATE. HE SAID, HOWEVER, THAT HE WAS AWARE OF THE IMPORTANCE THE USG ATTACHED TO THE MATTER AND THE DESIRABILITY OF AVOIDING FRICTION IN THE CIVIL AVIATION FIELD. HE STATED THAT THE FOREIGN MINISTRY WAS PREPARED TO RECEIVE A COUNTER PROPOSAL MADE BY THE EMBASSY IN RESPONSE TO THE BRAZILIAN NOTE THAT WOULD REQUEST NARROWING THE FOCUS OF A BILATERAL UNDERSTANDING TO THE FUEL TAX EXEMPTION. CABRAL DE MELLO PROMISED TO HANDLE SUCH A COUNTER PROPOSAL EXPEDITIOUSLY AND HE INTENDED THAT THE FOREIGN MINISTRY WOULD PRESENT IT TO CERNAI AS

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POSITIVELY AS POSSIBLE, ALTHOUGH HE DID NOT KNOW WHAT OTHER ISSUES CERNAI WISHED TO ADDRESS IN A NON-SKED BILATERAL. CUBRAL RULED OUT ANY POSSIBILITY OF AN AMENDMENT TO THE BRAZILIAN LAW AS AN IMMEDIATE SOLUTION, NOTING THAT THE CERNAI INTERPRETATION DID NOT LEAVE ROOM FOR SUCH A CHANGE. CABRAL ADDED THAT CERNAI ALSO HAD TO TAKE INTO ACCOUNT ITS RELATIONS WITH EUROPE ON NON-SCHEDULED FLIGHTS (BRAZIL'S NON-SKED, ROTOTUR, FLIES CHARTERS ONLY TO EUROPE).

7. COMMENT: THE EMBASSY CONSIDERS IT VERY IMPORTANT THAT WE COME BACK QUICKLY WITH A RESPONSE TO THE BRAZILIAN NOTE. THE DEPARTMENT PRESUMABLY WILL CONSIDER THE FEASIBILITY OF AN EXCHANGE OF DIPLOMATIC NOTES GRANTING U.S. EXEMPTION OF FUEL TAX FOR NON-SCHEDULED AIRLINES, AND NOTING A READINESS TO CONSIDER THE NEGOTIATION OF A MORE GENERAL BILATERAL AGREEMENT COVERING OTHER NON-SCHEDULED AIRLINE PROBLEMS. WE WOULD APPRECIATE THE DEPARTMENT'S IDEAS AS TO THE BEST MEANS FOR ISOLATING THE FUEL TAX ISSUE AND ITS SUGGESTIONS FOR THE WORDING OF SUCH A NOTE.

8. FOLLOWING IS INFORMAL TRANSLATION OF BRAZILIAN NOTE:
BEGIN TEXT: THE MINISTRY OF EXTERNAL RELATIONS PRESENTS ITS COMPLIMENTS TO THE EMBASSY OF THE UNITED STATES
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OF AMERICA, AND HAS THE HONOR TO REFER TO ITS NOTE NO. 15 OF 13 JANUARY 1976, RELATIVE TO THE EXEMPTION OF THE TAX ON FUEL AND LUBRICANTS FOR U.S. TRANSPORT CORPORATIONS THAT MAINTAIN NON-REGULAR AIRLINE SERVICES TO AND FROM BRAZIL.

THE MINISTRY OF EXTERNAL RELATIONS WISHES TO REMIND THE EMBASSY ON THIS ISSUE THAT THE SUBJECT IS REGULATED BY THE 1946 AIR AGREEMENT, BY WHICH BOTH GOVERNMENTS COMMITTED THEMSELVES TO CONCEDE TO CARRIERS RECIPROCALLY DESIGNATED, THE SAME TREATMENT AS THAT GRANTED TO NATIONAL CARRIERS, ON MATTERS CONCERNING THE EXEMPTION OF TAXES ON FUEL, OILS, AND LUBRICANTS, ETC. AS A CONSEQUENCE, AND UNDER THE TERMS OF ARTICLE 2 OF THAT AGREEMENT, SUCH TREATMENT MUST BE ACCORDED TO COMPANIES DESIGNATED BY THE TWO GOVERNMENTS: VARIG BY BRAZIL AND PAN AMERICAN AIRWAYS AND BRANIFF BY THE UNITED STATES, AND IS NOT APPLIED BY BRAZIL TO THE OTHER U.S. COMPANIES THAT REALIZE "CHARTER" FLIGHTS.

THE GOVERNMENT OF BRAZIL DISTINGUISHES BETWEEN REGULAR AND NON-REGULAR SERVICES, UNDER THE TERMS OF ARTICLES 5 AND 6 OF THE CHICAGO CONVENTION, AND, IN CONSONANCE WITH THAT DIRECTIVE, THE 1946 BILATERAL AIR AGREEMENT REGULATES ONLY REGULAR SERVICES. THE NON-REGULAR ("CHARTER") SERVICES OPERATE UNDER UNILATERAL AUTHORIZATION

OF THE BRAZILIAN GOVERNMENT, SO THAT THE BILATERAL AGREEMENT DOES NOT APPLY IN THEIR CASE.

IN REFERENCE TO THE ARTICLE 8 OF LAW 1815 OF 1953, MENTIONED IN THE U.S. NOTE, THE RECIPROCITY THEREIN SPECIFIED APPLIES EXCLUSIVELY TO CARRIERS THAT REALIZE REGULAR SERVICES, IN THE CASES WHERE THE MATTER IS NOT REGULATED BY AN AIR TRANSPORT AGREEMENT.

FINALLY, THE MINISTRY OF EXTERNAL RELATIONS WISHES TO INFORM THE EMBASSY OF THE UNITED STATES THAT THE GOVERNMENT OF BRAZIL IS DISPOSED TO EXAMINE WITH THE COMPETENT U.S. AUTHORITIES THE PROBLEM ON NON-REGULAR AIR SERVICES OPERATED BETWEEN BRAZIL AND THE UNITED STATES, IN THE TOTALITY OF ITS IMPLICATIONS. END TEXT.
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